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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 670,181	09 26 2000	Alfred D. Roeske	END016	5781

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EXAMINER
TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
1774	

DATE MAILED: 01 02 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☒ The drawing(s) filed on 9/26/00 is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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### DETAILED ACTION

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no support in the specification for the limitation recited in claims 10 and 13-15. Applicant should insert these limitations in an appropriate place in the specification.

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao (US 6,284,007).

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Tao teaches a vegetable lipid-based composition and candle comprising fully hydrogenated triglycerides and free fatty acids (see col. 1, lines 60-67). The triglycerides and free fatty acids are obtained from plant sources (see col. 2, lines 51-55) and are preferably saturated (see col. 3, lines 1-2). The free fatty acid/triglyceride mixture contains from 1-99% triglyceride and from 1 to 99 free fatty acid (see Example 5). Tao teaches the limitations of the claims other than the difference that is discussed below.

Tao differs from the claims in that he does not specifically teach the claimed iodine value. However, it would be reasonable to expect that the triglycerides and fatty acids of Tao would possess the claimed iodine value because Tao teaches that the triglycerides are fully hydrogenated and that he prefers triglycerides and free fatty acids that are saturated.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Will (US 1,954,659).

Will teaches a candle composition comprising 50% or more of a hydrogenated vegetable oil and the remainder stearic acid (see lines 18-32). The preferred oil is rapeseed; however, other oils may be used (see lines 56-58). Will teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Will differs from the claims in that he does not specifically teach the claimed IV. However, it would be reasonable to expect that the oils of Will would possess the claimed IV because Will teaches that the oils are hydrogenated.

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In the second aspect, Will differs from the claims in that he does not specifically teach that the stearic acid is from a plant source. However, it would be reasonable to expect that the acid would be from a plant source because Will is using only natural ingredients in his candle.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Calzada (US 6,063,144).

Calzada teaches a non-paraffin candle composition comprising plant source stearic acid and hydrogenated vegetable wax (hydrogenated castor oil) (see col. 2, lines 9-28; col. 3, lines 12-15). Calzada desires a stearic acid and vegetable wax that have an iodine number no greater than 7 (see col. 2, lines 51-53 and col. 3, lines 9-12).

Accordingly, Calzada teaching all the material limitations of the claims, anticipates the claims.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by JP63168494.

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JP teaches a composition of hydrogenated palm stearin having an iodine number of 1-5. JP teaches that these products are suitable for use in preparing candles (see abstract in its entirety).

JP teaching all the material limitations of the claims, anticipates the claims.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 63168494.

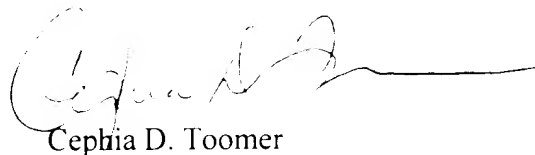
JP has been discussed above. JP fails to teach that the hydrogenated palm stearin has an iodine number of less than 1. However, a prima facie case of obviousness exists where the claims ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals vs Banner*, 227 USPQ 773 (Fed. Cir. 1985).

The prior art made of record but not relied upon is cited for teaching the general state of vegetable oil based candles.

Any inquiry concerning this communication should be directed to Cephia Toomer at telephone number (703) -308-2509.

Toomer/LR

December 7, 2001



Cephia D. Toomer

Patent Examiner-1714